

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Release (together with any exhibits hereto, the "Agreement") is effective as of this 15<sup>th</sup> day of December, 2016 (the "Effective Date"), by and between Vix Technology (USA) Inc. ("Vix"), on the one hand, and Snohomish County Public Transportation Benefit Area, Kitsap County Public Transportation Benefit Area, Central Puget Sound Regional Transit Authority, Washington State Department of Transportation, Ferries Division, Pierce County Public Transportation Benefit Area Corporation, City of Everett, and King County, (collectively, the "Agencies") on the other hand. Vix, each of the Agencies and the Agencies together are referred to herein individually as a "Party" and collectively as the "Parties."

### I. RECITALS

1. The Parties have between them a binding contract for the design, building, maintenance, and operation of a regional fare card system ("RFC System") to facilitate payment for transit services on the public transportation services operated by each of the Agencies (the "Contract").

2. Unless specifically defined herein, all capitalized terms have the same meaning as in the Contract.

3. In December 2011, a dispute arose between the Agencies and Vix regarding payment requirements under the Contract for certain units of ORCA equipment used in the RFC System sent by the Agencies to the Vix Seattle workshop bench (the "Depot") for repair/replacement. This dispute has been generally referred to by the Parties as the "Depot Maintenance Dispute."

4. In 2012 Vix filed a claim with the Dispute Review Board ("DRB") regarding the Depot Maintenance Dispute. By agreement of Vix and the Agencies, the resolution process was delayed as the Parties were actively engaged in negotiations related to other operations and maintenance issues and mediation regarding system security. The DRB was never formally engaged to resolve the Depot Maintenance Dispute.

5. One issue in the Depot Maintenance Dispute involves charges for units submitted by the Agencies to the Depot for repair/replacement that are determined by Vix to be "No Fault Found" or "NFF". The Agencies and Vix disagree as to whether the contractual depot maintenance fees should be applied to NFF units.

6. The Depot Maintenance Dispute also involves charges for the On Board Fare Transaction Processor ("OBFTP") software reload and the replacement of the Driver Display Unit ("DDU") compact flash card. The Agencies contend that these repairs are necessary because of design defects and that they are therefore not contractually required to pay depot maintenance fees for the repairs. Vix disputes the Agencies' interpretation of the Contract and claims that the repairs are not necessitated by design defects.

7. Since the Depot Maintenance Dispute first arose in December 2011, the Parties have engaged in a process of dual invoicing for depot maintenance charges, separating charges subject to the Depot Maintenance Dispute from undisputed charges.

8. In the interest of preserving the contractual and business relationship between the Parties, providing the best service to the public, and resolving the Depot Maintenance Dispute, the Parties engaged in an informal dispute resolution process and agree to settle their differences as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, obligations, and covenants set forth in this Agreement, the Parties agree as follows:

## **II. TERMS AND CONDITIONS OF SETTLEMENT**

### **1. No Fault Found (NFF)**

The Agencies agree to pay the depot maintenance fees set forth in Exhibit 14, Section VIII of the Contract for units that are submitted to Vix for repair/replacement and returned to the Agencies with a determination of NFF. If a unit determined to be NFF fails within six months of its return to the Agencies with the same fault description associated with the NFF determination, Vix shall repair/replace the unit and deliver a compliant unit without charge to the Agencies.

Vix agrees that it will not make a determination of NFF and will not return any unit the Agencies submitted for repair/replacement until the protocol listed at Exhibit A to this Agreement has been completed for that unit. PFTPs where a NFF is discovered will not be charged.

### **2. Software Reboots and CF Card Replacements**

No depot maintenance fee shall be applied to any unit submitted for repair/replacement where the unit is repaired by Vix with a software reboot only with no unit component needing replacement.

No depot maintenance fee shall be applied to any Driver Display Unit ("DDU") submitted for repair/replacement where the unit is repaired by Vix by replacing the Compact Flash ("CF") card, but not any other unit components.

### **3. Key Performance Indicator (KPI) Reliability**

The Parties agree the monthly Reliability KPI results shall not affect whether a unit submitted for repair/replacement is subject to a depot maintenance fee. In other words, Vix shall not be precluded from assessing a depot maintenance fee solely due to a type of device exceeding the Reliability KPI failure limit in a given month. Instead, the provisions of this Agreement and the Contract shall determine whether or not a depot maintenance fee may be assessed.

**4. Disputed Depot Maintenance Charges**

The Parties agree that there is a total of \$262,091.62 in disputed charges, total of all invoices including PFTP's, subject to the Depot Maintenance Dispute. In consideration of the agreements set forth herein, the Parties agree that Vix and Agencies shall each bear responsibility for 50% of the total amount (\$131,045.81). The Agencies will pay their share to Vix within 90 days of the Effective Date of this Agreement.

**5. Portable Fare Transaction Processors (PFTPs)**

This Agreement does not alter the Parties' obligations regarding the repair and maintenance of PFTPs. The Parties agree that issues regarding the repair and maintenance of PFTPs are to be resolved in accordance with the Contract, as amended by the End of Life Settlement Agreement and Mutual Release signed by the Parties in 2014.

**6. Mutual Release**

With respect to the issues set forth in paragraphs 1 through 4 of the Terms and Conditions of Settlement above, and only with respect to these issues, Vix, on the one hand, and the Agencies, on the other hand, forever release and discharge each other and its or their respective subsidiaries, parents, divisions, affiliates, officers, directors, owners, shareholders, members, managers, associates, predecessors, successors, assigns, agents, partners, employees, insurers, representatives, attorneys, and any and all persons acting by, through, under or in concert with them, of and from any and all manner of action(s), cause(s) of action in law or in equity, and any suits, debts, liens, claims, demands, damages, rights, losses, costs, and/or expenses, of any nature whatsoever, now known.

**7. Public Document.**

This Agreement, including, but not limited to, the attached Exhibit, is a public document.

**8. Representations and Warranties.**

**a. Organization, Authorization**

Vix, on the one hand, and the Agencies on the other hand, represent and warrant to each other that (i) each Party has full and complete power, capacity, and authority to enter into this Agreement and to consummate all transactions and perform all obligations contemplated by this Agreement, (ii) the execution of this Agreement has been duly authorized by all necessary corporate or official action, if any, on the part of each Party, and (iii) this Agreement constitutes a legal, valid, and binding obligation, enforceable in accordance with its terms.

**b. Company Consent and Approval**

Vix and the Agencies represent and warrant that (i) all necessary third-parties have consented to and approved this Agreement, or (ii) such consent and approval are not required for the execution of this Agreement or the performance by Vix and/or the Agencies of their obligations herein and therein.

**9. Counterparts.**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as the original instrument and as if all the Parties to the counterparts had signed the same instrument. The Parties also agree that facsimile, portable document format ("PDF"), scanned, and/or electronic signatures shall have the same effect as manually signed originals and shall be effective upon transmission.

**10. Construction.**

This Agreement was negotiated and prepared by the Parties and their respective attorneys. The Parties acknowledge and agree that the rule of construction that an ambiguous contract should be construed against the drafter shall not be applied in any construction or interpretation of this Agreement. The singular form of a word shall also mean and include to the plural (and vice versa), and the masculine gender shall also mean and include the feminine and gender neutral (and vice versa). This Agreement is not intended to alter existing contractual obligations, except where expressly agreed.

**11. No Third-Party Beneficiaries.**

This Agreement is for the benefit of each Party individually and the Parties collectively. There are no intended third-party beneficiaries, and the Parties expressly disclaim and unintended third-party beneficiaries to this Agreement or any part of this Agreement.

**12. Governing Law.**

This Agreement and any rights, remedies, and/or obligations provided for in this Agreement shall be governed, construed, and enforced in accordance with the substantive and procedural laws of the State of Washington as of the Effective Date. King County Superior Court will be the exclusive venue for resolving any dispute arising out this Agreement.

**13. Entire Agreement.**

This Agreement, including any attached exhibits, constitutes a single, integrated written contract expressing the entire understanding and agreement between the

Parties, and the terms of the Agreement are contractual and not merely recitals. Other than the Contract, no other agreement, written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

**14. Severability.**

The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable, or void for any reason whatsoever, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions, or parts.

**15. Headings and Captions.**

The headings and caption inserted into this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

**16. Attorney's Fees.**

If any Party brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal shall be entitled to have its reasonable costs, expenses, including any consulting or expert expenses, and attorney's fees paid by the other party.

IN WITNESS WHEREOF, the Parties have executed this Amendment Two to the Interim Agreement, effective as of the Effective Date listed above.

READ AND AGREED TO:

By:

  
Vix Technology (USA) Inc.

Name: DOUGLAS W. THOMAS

Title: GENERAL MANAGER

Dated: 12/5/16

And By:

  
Victor Obeso, King County  
(King County Metro Transit)

Dated: 12/7/16

\_\_\_\_\_  
Emmett Heath, Snohomish County Public  
Transportation Benefit Area Corporation  
(Community Transit)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tom Hingson, City of Everett  
(Everett Transit)

Dated: \_\_\_\_\_

\_\_\_\_\_  
John Clauson, Kitsap County Public  
Transportation Benefit Area Authority  
(Kitsap Transit)

Dated: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Amendment Two to the Interim Agreement, effective as of the Effective Date listed above.

READ AND AGREED TO:

By: \_\_\_\_\_  
Vix Technology (USA) Inc.

Name: \_\_\_\_\_


Title: \_\_\_\_\_

Dated: \_\_\_\_\_

And By:

\_\_\_\_\_  
Victor Obeso, King County  
(King County Metro Transit)

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Emmett Heath, Snohomish County Public  
Transportation Benefit Area Corporation  
(Community Transit)

Dated: 12-13-16

\_\_\_\_\_  
Tom Hingson, City of Everett  
(Everett Transit)

Dated: \_\_\_\_\_

\_\_\_\_\_  
John Clauson, Kitsap County Public  
Transportation Benefit Area Authority  
(Kitsap Transit)

Dated: \_\_\_\_\_



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Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

And By:

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Victor Obeso, King County  
(King County Metro Transit)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Emmett Heath, Snohomish County Public  
Transportation Benefit Area Corporation  
(Community Transit)

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Tom Hingson, City of Everett  
(Everett Transit)

Dated: 12-12-16

\_\_\_\_\_  
John Clauson, Kitsap County Public  
Transportation Benefit Area Authority  
(Kitsap Transit)

Dated: \_\_\_\_\_



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Vix Technology (USA) Inc.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

And By:

\_\_\_\_\_  
Victor Obeso, King County  
(King County Metro Transit)


Dated: \_\_\_\_\_

\_\_\_\_\_  
Emmett Heath, Snohomish County Public  
Transportation Benefit Area Corporation  
(Community Transit)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tom Hingson, City of Everett  
(Everett Transit)

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
John Clauson, Kitsap County Public  
Transportation Benefit Area Authority  
(Kitsap Transit)

Dated: 12/8/2016



Susan Dreier, Pierce County Public  
Transportation Benefit Area Corporation  
(Pierce Transit)

Dated: 12/8/16

Brian McCartan, Central Puget Sound Regional  
Transit Authority  
(Sound Transit)

Dated: \_\_\_\_\_

Lynne Griffith, WSDOT Ferries Division  
(Washington State Ferries)

Dated: \_\_\_\_\_

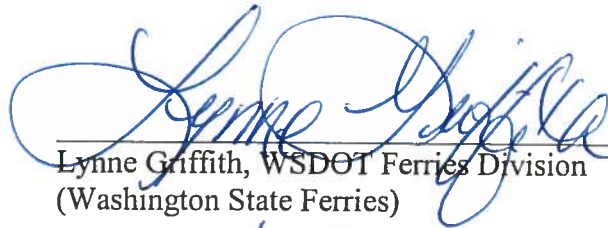
\_\_\_\_\_  
Susan Dreier, Pierce County Public  
Transportation Benefit Area Corporation  
(Pierce Transit)

Dated: \_\_\_\_\_



\_\_\_\_\_  
Brian McCartan, Central Puget Sound Regional  
Transit Authority  
(Sound Transit)

Dated: 12/7/16



\_\_\_\_\_  
Lynne Griffith, WSDOT Ferries Division  
(Washington State Ferries)

Dated: 12/15/16

## Exhibit A

For all devices sent by the Agencies to Vix, the following protocol is followed:

1. *Initial inspection:* A check is performed to verify if the device exhibits the issues outlined by its problem description. If yes, continue to repair. If no, continue to final testing.
2. *Standard/repair testing:* Once the fault is identified, if components need to be replaced, they are done one at a time. By way of example, based on experience 95% of the time, a "black screen" on an OBFTP means faulty memory. The memory is replaced and the device is tested again. If the same problem is still exhibited the original component is returned back into the device and the next possible faulty component is replaced, in this example it would be the CPU. This continues until the device returns to full service. Full service means it powers on, has a functional speaker and LCD, has operable software, downloads CD, and read cards (if applicable). Any components replaced are outlined in the repair notes for that RMA.
3. *Final testing:* After the fault appears to be corrected, the device is tested once more. The unit is shut down completely, then booted up again to ensure it is truly at full service. After full service is confirmed, any screws, nuts, etc., are returned to their appropriate locations and the device is securely closed. In the event that the device did not exhibit any problems upon initial inspection, final testing is performed three times, with several minutes in between each full test set, to verify it is truly at full functionality.